



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/173861

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 25, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Barron County Department of Human Services in regard to Medical Assistance (MA), a hearing was held on May 16, 2016, at Barron, Wisconsin.

The issue for determination is whether the petitioner must repay an overpayment of Medicaid and Medicare Premium Assistance.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

;

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]

Barron County Department of Human Services  
Courthouse Room 338  
330 E Lasalle Ave  
Barron, WI 54812

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Barron County.
2. The department notified the petitioner on March 9, 2015, that he and his wife would receive Medicaid beginning on February 1, 2015 and Qualified Medicare Beneficiary premium

assistance beginning on April 1, 2015. That notice informed him that he must report any change of income within 10 days.

3. The department seeks to recover \$2,409.20 of the QMB benefits and \$750.94 of the Medicaid benefits the petitioner received from April 1, 2015, through May 31, 2015.
4. The agency did not provide any evidence showing how much QMB or Medicaid the petitioner received each month or how much of each monthly payment it seeks to recover.

### **DISCUSSION**

The department seeks to recover Qualified Medicare Beneficiary (QMB) and Medicaid benefits the petitioner received because it contends that he failed to report income that exceeded the program's limit. QMB pays for Medicare Part B premiums and some Medicare deductibles and co-payments. A QMB recipient's income cannot exceed 100% of the federal poverty level. *Medicaid Eligibility Handbook*, § 32.2.3. Medicaid provides healthcare benefits to poor persons. The department may recover any overpayment of medical assistance that occurs because of the "failure of a Medical Assistance...recipient...to report any change in the recipient's financial... situation...that would have affected the recipient's eligibility for benefits..." Wis. Stat. § 49.497(1). Changes in income must be reported within 10 days of the date of the change. *Medicaid Eligibility Handbook*, §12.1.

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). The court in *Hanson* stated that the policy behind this principle is to assign the burden to the party seeking to change a present state of affairs. By seeking to recover the petitioner's benefits, the department is the moving party. The Department acknowledged the principle laid down in *Hanson* in *Final Decision No. ATI-40/87198* where Deputy Secretary Richard Lorang ruled on August 17, 1995, that in any fair hearing concerning the propriety of an agency action, the county or state agency has the burden of proof to establish that the action it took was proper given the facts of the case.

The petitioner did not report income and this was probably enough to affect his benefits. But when the department seeks to recover an overpayment, it must present evidence that demonstrates that the amount of the overpayment is proper. Sometimes the department's evidence falls short but is still sufficient to establish that at least some particular lesser amount was overpaid. This is not true here. The department did not present any evidence showing how much QMB or Medicaid the petitioner received each month or how much of each monthly payment it seeks to recover. It only gave one figure for each of the two portions of the overpayment, QMB and Medicaid, and these two figures were the totals for the entire overpayment period. The department did nothing to establish that this amount is correct. Nor did it present enough evidence to establish that it is owed at least some particular lesser amount. The overpayment could be any particular amount up to the \$3,160.16 it seeks to recover. Or even more—there is no way to tell from the evidence presented. Thus, although it is likely the petitioner's failure to report his return to work allowed him to receive more QMB and Medicaid than he was entitled to, determining how much more he received is a matter of pure speculation, which is not a proper basis for establishing an overpayment claim. The department has not met its burden of proof. Therefore, it cannot recover the alleged overpayment.

### **CONCLUSIONS OF LAW**

The county agency has not established by the preponderance of the credible evidence an amount of QMB and Medicaid that the petitioner was overpaid.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it end all efforts to recover the overpayment of Medicaid and QMB that it alleges occurred from April 1, 2015, through May 31, 2015, and that it remove that overpayment finding from the petitioner's record.

### REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 18th day of May, 2016

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\s\sMichael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on May 18, 2016.

Barron County Department of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability